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Federal Communications Commission Consumer & Governmental Affairs Bureau Washington, D C. 20554 CGB

SEP 15 2003

Control No 0302593/aw

The Honorable Jo Ann Davis U.S. House of Representatives 1123 Longworth House Office Building Washington, D.C. 20515

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Dear Congresswoman Davis:

Thank you for your letter on behalf of your constituent, Mr. Donald Hall, President of the Virginia Automobile Dealers Association (VADA), regarding the Federal Communications Commission's (Commission) recent amendment to the rules implementing the Telephone Consumer Protection Act of 1991 (TCPA). Specifically, Mr. Hall expresses concern that the Commission reversed its prior conclusion that an "established business relationship" constitutes the necessary express permission to send an unsolicited facsimile advertisement. Mr. Hall indicates that requiring such express permission to be in writing will place onerous burdens on associations that wish to fax their members.

On September 18, 2002, the Commission released a Notice of Proposed Rulemaking (NPRM) in CG Docket No. 02-278, seeking comment on whether it should change its rules that restrict telemarketing calls and unsolicited fax advertisements, and if so, how. The NPRM sought comment on the option to establish a national do-not-call list, and how such action might be taken in conjunction with the national do-not-call registry rules adopted by the Federal Trade Commission (FTC) and the numerous state do-not-call lists. In addition, the Commission sought comment on the effectiveness of the TCPA's unsolicited facsimile advertisement rules, including the Commission's determination that a prior business relationship between a fax sender and recipient establishes the requisite consent to receive advertisements via fax. The Commission received over 6,000 comments from individuals, businesses, and state governments on the TCPA rules.

The record in this proceeding, along with our own enforcement experience, demonstrated that changes in the current rules are warranted, if consumers and businesses are to continue to receive the privacy protections contemplated by the TCPA. As explained in the Commission's Report and Order released on July 3, 2003, the record indicated that many consumers and businesses receive faxes they believe they have neither solicited nor given their permission to receive. Consumers emphasized that the burden of receiving hundreds of unsolicited faxes was not just limited to the cost of paper and toner, but includes the time spent reading and disposing of faxes, the time the machine is printing an advertisement and is not operational for other purposes, and the intrusiveness of faxes transmitted at inconvenient times, including in the middle of the night.

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As we explained in the Report and Order, the legislative history of the TCPA indicates that one of Congress' primary concerns was to protect the public from bearing the costs of unwanted advertising. Therefore, Congress determined that companies that wish to fax unsolicited advertisements to customers must obtain their express permission to do so before transmitting any faxes to them. The amended rules require all entities that wish to transmit advertisements to a facsimile machine to obtain permission from the recipient in writing.

The Commission's amended facsimile advertising rules were initially scheduled to go into effect on August 25, 2003. However, based on additional comments received since the adoption of the July Report and Order, the Commission, on its own motion, determined to delay the effective date of some of the amended facsimile rules, including the elimination of the established business relationship exemption, until January 1, 2005. The comments filed after the release of the Report and Order indicate that many organizations may need additional time to secure this written permission from individuals and businesses to which they fax advertisements. Enclosed is a copy of the Commission's Order on Reconsideration, released on August 18, 2003.

We appreciate Mr. Hall's comments. We have placed a copy of Mr. Hall's correspondence in the public record for this proceeding. Please do not hesitate to contact us if you have further questions.

Sincerely,

K. Dane Snowden

Chief

Consumer & Governmental Affairs Bureau

Enclosures

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COMMITTEES

ARMED SERVICES

INTERNATIONAL RELATIONS

GOVERNMENT REFORM

REORGANIZATION SUBCOMMITTEL CHAIRWOMAN CIVIL SERVICE AND AGENCY

445 12th Street SW Federal Communications Commission Chairman Michael K. Powell

Washington, D.C. 20554

Dear Chairman Powell:

VADA. Please consider the VADA's concerns during this public comment period. effect on numerous businesses, including automobile dealers and associations such as the the Telephone Consumer Protection Act with respect to fax solicitations will have a detrimental Automobile Dealers Association (VADA). The VADA is concerned that the FCC's revision of I would like to bring your attention to the attached correspondence from the Virginia

regarding this matter or any other. my office. Please do not hesitate to contact me or my office with questions or information I appreciate your consideration of this matter and I ask that you forward your response to

With kind regards, I remain

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August 11, 2003

AUG 12 2003

The Honorable Jo Ann S. Davis 4904 - B George Washington Memorial Hwy Yorktown, VA 23692

Dear Jo Ann.

As a follow-up to my letter of August 4, 2003 concerning the new fax regulations announced by the FCC, I just wanted to emphasize oncé again the importance of this issue to the Virginia Automobile Dealers Association and our Virginia dealer members. This new rule would significantly impair the ability of this association to communicate with our members and our dealers to communicate with their customers. I have enclosed a copy of our August 4th letter for your reference.

Time is of the essence here as the final rule is set to become effective on August 25, 2003 On behalf of the VADA and our dealer members, I ask that you take immediate action to allow Virginia businesses like the VADA and our dealer members to continue to communicate with their customers.

Again, I would appreciate your response as soon as possible.

Thank you for your consideration of this critical problem for the automobile dealers of Virginia and the Virginia Automobile Dealers Association.

Sincerely,

Donald L. Hall

President

cc. Mike Suttle, III, Suttle Motor Corp. Frank Pohanka, Pohanka Auto Group

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August 4, 2003

The Honorable Jo Ann S. Davis 4904 - B George Washington Memorial Hwy Yorktown, VA 23692

Dear Jo Ann

Please pardon me for sending such a lengthy letter, but I am shocked by the new fax regulations recently announced by the FCC that are simply unparalleled as an example of a regulatory process run amok resulting in too much government intrusion into the legitimate activities of business. I am unable to understand a regulation that basically prevents businesses including the VADA and the Virginia auto dealers we represent from communicating with their own members and customers

I have outlined our understanding of the new rule as well as our grave concerns as to its impact on Virginia businesses including the VADA and its auto dealer members.

On July 25, 2003, the Federal Communications Commission (FCC) revised the current rules to the Telephone Consumer Protection Act (TCPA). 68 Fed. Reg. 44,144 (Jul. 25, 2003) (to be codified at 47 C F.R. § 64.1200). The final rule is effective August 25, 2003.

The final rule now requires that any person or entity who wishes to send a fax advertisement must obtain prior, written permission from the recipient. This applies to all businesses, including associations like the VADA and the automobile dealers in Virginia we represent. This requirement applies to any fax sent containing "any material advertising the commercial availability or quality of any property, goods, or services" 47 C.F.R. § 64 1200(f)(10).

Permission must be in writing. Along with the recipient's signature, a form granting permission to receive fax advertisements must also include the recipient's fax number and a clear statement that the recipient consents to receive fax advertisements from the sender. Also, opt-out provisions are not allowed. This means that fax advertisements may not be sent with an instruction that the recipient call a phone number if he or she does not want to receive future faxes.

The final rule significantly impacts all businesses, including associations like the VADA and the automobile dealers in Virginia we represent. Under the former rule, a business could send fax advertisements without obtaining prior written consent from a recipient so long as that business had an "established business relationship" with the recipient. An "established business relationship" meant a relationship formed by a voluntary two-way communication based upon an inquiry, application, purchase or transaction. For associations, that meant that all members had an established business relationship, and the association could communicate by fax without specific consent.

